

Thomas Dent, D. D. APPELLANT.

Sir William Buck, Kn^t. and Bar^{nt}.
& al's RESPONDENTS.

Dr. Dent his C A S E.

DR. Dent, the Appellant, is Vicar of *Lenton*, in the County of *Lincoln*, in which Parish there is the Mannor or Lordship of *Handby*, alias *Hanbeck*, and also certain Lands call'd *Grangeleas*, both of them the Estate of Sir William Buck the Respondent; and *Handby* was formerly pretended to be exempted from Tythes; and at other times, that a *Modus* of 20 s. per Annum was payable in lieu of all Tythes for the same.

About the 37 of *Eliz.* a Suit was commenced in the Arches, by the then Vicar, against the Owner or Farmer of the said Lordship of *Handby*, and Nine Witnesses were examined, who proved the Payment of Tythes for this Estate.

But the Defendant, in the Spiritual Court, upon Suggestion of a *Modus* of 20 s. obtained a Prohibition, and examined Two Witnesses to prove his Suggestion, and Issue being join'd thereupon, there was a Tryal at the Assizes by a Jury at *Lincoln*, against the said *Modus*, and thereupon a Consultation granted, and a Sentence given for Tythes in the Spiritual Court, 39 *Eliz.*

But 12^o *Jac.* 1. the Respondent's Grandfather or Father, out of a Design (as it seems reasonable to presume) to impose upon the succeeding Vicars of *Lenton*, took out an Exemplification under Seal of the Suggestion and Prohibition, and the Testimony of the Two Witnesses examin'd to prove the Suggestion, without taking Notice of the Tryal at Law, the Consultation, and Judgment in the *King's-Bench*, or Sentence in the Ecclesiastical Court; and some of the succeeding Vicars being prevail'd upon to take sometimes 20 Nobles per Annum, and sometimes a Clofe was allow'd in lieu of Tythes, and sometimes 13 l. per Annum was paid, as appears by Two Terrars taken out of the Register of *Lincoln*; and in Mr. *Lodington's* Time, Predecessor to the Appellant, 11 l. yearly paid, besides the pretended *Modus* of 20 s. per Annum; they took from time to time Acquittances in full, expressing only the 20 s. *Modus*, tho' they paid the other Sums besides.

The Appellant being made Vicar, he applyed to the Respondent for Satisfaction for the Tythes, but the Respondent producing the said Exemplification under Seal, pretending that there never had been further Proceedings in Right of the Vicars of *Lenton* after the said Prohibition, but that they being convinced of the Truth of such *Modus* had acquiesced under it. The Appellant believing this might be true, without any farther Examination, (for Peace sake) submitted to an Agreement, which, tho' written by himself, was yet drawn up in Particulars by one Mr. *Peregrine Buck*, who was a Relation, and had been Guardian to the said Respondent, and therefore believes he might know the Fraud put upon the former Vicars, since he is a Witness to several Acquittances produced for the said pretended *Modus*, and was the chief Instrument to promote the said Agreement, and did induce the Appellant to write the same, and to Covenant that he would accept the same Money as was paid to his Predecessors, and to give such Discharges as he had done.

But by some Copies of Writings since accidentally fallen into the Appellant's Hands, he having discovered the Fraud of this Exemplification, and that he had been impos'd upon by the said Respondent, for that after the said Prohibition, there had been such a Tryal, Consultation, Judgment, and Remission of the Sentence to the Arches as aforesaid, he prefer'd his Bill against the Respondent for Tythes in kind, and to be relieved against the said Agreement, which he is advis'd was a Fraud put upon him, and such as ought not in Equity to bind him, since in the very **express Terms and Words of the Agreement**, 'tis said, *That Sir William Buck, shewing to the said Thomas Dent an Exemplification of a Record, testifying an ancient Right or Modus by Prescription of 20 s. per Annum, formerly paid by his Ancestors to the Vicars of Lenton, in full Consideration of all Tythes whatsoever. It was therefore hereupon fully agreed on between the abovenamed Persons, &c.*

The Appellant would never have questioned the said Agreement, in case, the said Exemplification shewed by the Respondent, had been true, and had contain'd (as was averr'd by him) the whole matter of the Record; but this now appearing otherwise, and the said Respondent intending to circumvent him, not only of the Tythes of *Handby*, but also to include *Grangeleas* under the said Agreement, tho' it be part of his Estate in another Lordship, as is full proved by the Appellant's Witnesses examin'd in the Cause, who have depos'd, That for Forty or Fifty Years past, it has been accounted Part and Parcel of *Lenton*, and always paid all Parish Rates as part of *Lenton*, but none of the Lands of *Handby* pay any Parish Rates, for the Respondent pretends they are exempted from the same.

Note, The *Modus*, pretended in the Suggestion, is only for 200 Acres of Meadow, and 200 Acres of Pasture, whereas the Lordship of *Handby* contains full 800 Acres, and is now Let or Valued at near 500 per Annum Rent, of which the Vicars should have the Rectorial Tythes, it being one of the Endowments of the said Vicarage, as appears by the Record in the Valuation of the First Fruits proved in the Cause.

And there are the Depositions of Nine Witnesses taken (in perpetuam rei memoriam) by a Commission directed out of Chancery, in Vicar *Dale's* Time, who proved the several kinds of Tythes, viz. Corn, Hay, Wool, &c. paid to the former Vicars.

Note, Tho' Acquittances pretended for the *Modus* of 20 s. per Annum, to be given by the Vicars near Fifty Years, yet none were proved to be given by Vicar *Dale*, or *Tempest Wood*, his Successor; tho' one lived Vicar near Twenty Years, and the other Fourteen, and all the time Acquittances were given for the said 20 s. the Owners of *Handby* paid sometimes 13 l. Yearly, and 11 l. per Annum was paid to Mr. *Lodington*, immediate Predecessor to the Appellant, as appears by his Tythe-Book proved in the Cause.

This Cause coming on to be heard in the *Exchequer*, the Court were pleas'd to dismiss the Appellant's Bill, and would not relieve him against the said Agreement, or decree him Tythes in kind of *Hanbeck*, nor yet decree him the Money payable on the said Agreement, tho' there be Six Years due pursuant to the Agreement of 11 l. per Annum. And as to the Tythes of *Grangeleas*, would not relieve him, tho' he had prov'd it to be no part of *Handby*, but dismiss the Appellant's Bill without decreeing him the Tythes in kind, or the Monies due on the said Agreement, with an Order for Costs to be taxed upon him in Prejudice (as he is advis'd) to the Churches, and the Appellant's Right.

And therefore the Appellant Hopes, That the Order and Decree of the Court may be set aside and revers'd, and that he may be reliev'd against the Agreement, and may have Tythes in kind decreed, as well of *Handby* as of *Grangeleas*.

Samuel Dodd.